



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-61/56498

PRELIMINARY RECITALS

Pursuant to a petition filed January 20, 2003, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Trempealeau County Dept. of Social Services in regard to medical assistance, a hearing was held on February 28, 2003, at Whitehall, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance under the spousal impoverishment provisions of that program when she was on the waiting list for one of the waiver's programs.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Richard Wallinger, ESS
Trempealeau County Dept Of Social Services
36245 Main St.
Whitehall, WI 54773-0067

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (xxx-xx-xxxx, CARES #xxxxxxxxxx) was a resident of Trempealeau County. She died on March 15, 2003.
2. The petitioner and her husband had approximately \$99,000 in assets, including a life insurance policy. Those assets produce \$215.66 in income every month.
3. The petitioner was living at home when she died.

4. The petitioner was on the waiting list for the Community Options Program when she died.

DISCUSSION

The petitioner died on March 15, 2003, which was after the hearing. Her husband had sought medical assistance on her behalf to cover her medical bills. The county agency denied her application because her assets exceeded the program's \$3,000 asset limit allowed for a two-person household. §49.47(4)(b)3m.e, Stats. At the time of the hearing, the petitioner and her husband had close to \$100,000 in assets.

Medical assistance rules contain an exception to the \$3,000 asset limit that applies to an institutionalized person who has a spouse who lives in the community. This exception, which is designed to prevent the spouse living in the community from falling into poverty, allows a couple to keep up to \$52,000 worth of assets and still have the institutionalized spouse eligible for benefits. §9.47(4)(b), Stats. For the petitioner to meet the requirement that she was institutionalized, she must have been in a medical institution or nursing facility or participated in one of the waivers programs described in 42 USC 1396n(c) or (d). Only those who have spent 30 consecutive days in the institution are considered institutionalized. *MA Handbook, Appendix*, §22.2.3. She was on a waiting list for the waiver program, but had not yet been accepted into the program when she died. She also had not spent 30 consecutive days in an institution. Therefore, she cannot receive medical assistance under the spousal impoverishment provisions of the act.

CONCLUSIONS OF LAW

The county agency correctly found that the petitioner was ineligible for medical assistance because her household's assets exceeded that allowed by the medical assistance program.

NOW, THEREFORE, it is ORDERED

That the petition herein be and the same hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this 11th day of
April, 2003

/sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
86/MDO